

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

**PHILADELPHIA FIRE FIGHTERS
UNION, I.A.F.F. LOCAL 22, AFL-
CIO, et. al.,**

Plaintiffs,

v.

**CITY OF PHILADELPHIA,
Defendant.**

CIVIL ACTION NO. 02-CV-4653

ORDER

AND NOW, this _____ day of _____, 2003, upon
consideration of the Motion of Defendant City of Philadelphia for Stay of Order Pending
Reconsideration and Appeal, it is hereby ORDERED and DECREED that the relief ordered in
paragraph 2 of this Court's Order of October 6, 2003 is stayed pending disposition of
reconsideration or appeal of this case.

By the Court:

Dalzell, J.

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

PHILADELPHIA FIRE FIGHTERS
UNION, I.A.F.F. LOCAL 22, AFL-
CIO, et. al.,

Plaintiff,

v.

CITY OF PHILADELPHIA,
Defendant.

CIVIL ACTION NO. 00-CV-3181

**MOTION OF DEFENDANT CITY OF PHILADELPHIA
FOR STAY OF ORDER PENDING RECONSIDERATION OR APPEAL**

Defendant City of Philadelphia, by and through its attorneys, respectfully requests that this Honorable Court stay the relief ordered in paragraph 2 of its Order dated October 6, 2003, and in support of this motion, sets forth the following facts:

1. On or about October 6, 2003, this Honorable Court issued its Order granting in part Plaintiffs' Motion for Summary Judgment. This Court held, *inter alia*, that the provisions of the City's Home Rule Charter and Civil Service Regulations prohibiting firefighters from making political contributions are unconstitutional. Attached hereto as Exhibit "A" is a copy of the Order and the Memorandum Opinion filed in support of the Order.

2. As part of the relief granted to the Plaintiff class, the October 6, 2003 Order provided that the City was permanently enjoined from enforcing the Charter provision and Civil Service Regulation prohibiting firefighters from making political contributions.

3. On or about October 20, 2003, pursuant to Fed. R. Civ. Proc. 59(e), Defendant filed a Motion for Reconsideration of this Court's Order. Should the Court deny that Motion, the City intends to appeal the Order to the United States Court of Appeals for the Third Circuit.

4. The City can make a strong showing that it is likely to succeed on the merits of its Motion for Reconsideration and any future appeal, for the reasons set forth in the Motion for Reconsideration, and in the briefs previously submitted to this Court on the merits of this case.

5. Most notably, this Court's Order is squarely at odds with a Supreme Court decision issued after briefing was completed in this case, as well as two federal appellate courts and one state Supreme Court. In *Federal Election Commission v. Beaumont*, 123 S.Ct. 2200, 2210 (U.S. June 16, 2003), the United States Supreme Court explicitly held that political contributions are not core First Amendment speech, and that strict scrutiny therefore does not apply in cases concerning political contribution bans. Furthermore, the Fifth and Eighth circuits, as well as the Missouri Supreme Court, have upheld similar provisions prohibiting police and fire fighters from making political contributions. *Reeder v. Kansas City Board of Political Commissioners*, 733 F.2d 543, 547-548 (8th Cir. 1984); *Pollard v. Board of Police Commissioners*, 665 S.W. 2d 333, 341 (Mo. 1984); *International Assoc. of Firefighters of St. Louis, Franklin and Jefferson Counties v. City of Ferguson*, 283 F.3d 969, 971-972 (8th Cir. 2002); *Wachsman v. City of Dallas*, 704 F.2d 160, 173 (5th Cir. 1983). This Court's decision is directly at odds with all of these holdings. See Opinion at 7, 13-14. At the very least, this Court should stay its judgment overturning the contribution restrictions until it has had a chance to determine the effect of these decisions.

6. Attached as Exhibit "B" to this Motion is an Affidavit of Evan Meyer, Senior Attorney with the City of Philadelphia Law Department, who is charged with educating and advising City employees about political activities restrictions upon them. Mr. Meyer avers that a

fluctuations in these rules would have a deleterious effect on compliance and create confusion among City employees.

7. Additionally, absent a stay pending reconsideration or appeal, the City will be harmed in that certain of the very evils that the contribution limit seeks to avoid -- political influence and public perception of political influence -- will be irreparably ingrained into the Fire Department. This is because, if this Court denies a stay but is then reversed on appeal, the beneficiaries of the political influence -- presumably uniformed individuals in the Fire Department who might receive positions based upon politics but not upon merit -- will continue to remain in the Department, greatly jeopardizing the public safety, and the public confidence in the integrity of the Fire Department.

8. Therefore the City would suffer harm if the Court's Order is not stayed and it ultimately prevails on reconsideration or on appeal because the resulting fluctuation in application of the City's political activities restrictions would create confusion and make it more difficult for the City to ensure compliance.

9. By contrast, the harm to fire fighters if the City continues to enforce the contribution ban during the pendency of its reconsideration motion and appeal is not great. As *Beaumont* noted, political contributions are marginal speech for First Amendment purposes, “[lying] closer to the edges than to the core of political expression.” Moreover, the harm to the plaintiffs is further attenuated given that there likely are many members of the plaintiff Fire Fighters Union who prefer the contribution restriction, which removes the possibility of any pressure -- political or otherwise -- to contribute.

For all of the above reasons, Defendant City of Philadelphia respectfully requests that this Honorable Court stay the relief ordered in its October 6, 2003 Order pending the disposition of Defendant's Motion for Reconsideration or Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving one copy of this Motion for Stay and Memorandum upon the following persons by hand delivery:

Richard G. Poulson, Esq.
and Ralph J. Teti, Esq.
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Date: October 20, 2003

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